Public Prosecutor v Chian Swee Ong

HIGH COURT MALAYA (SHAH ALAM) — CRIMINAL TRIAL NO 45–68 OF 2002
KN SEGARA J
17 FEBRUARY 2006

Criminal Law — Murder — Defence — Grave and sudden provocation — Prostitute mocked accused's expression of love for her — Whether reasonable for accused to be provoked

The accused was charged for the murder of a female prostitute ('Sarah'). The accused raised the defence of grave and sudden provocation and testified that upon seeing and hearing Sarah's cold, humiliating and mocking response to his expression of love for her, he lost control of himself and stabbed Sarah with a knife.

Held, finding the accused guilty and sentencing him to death:

(1) The relationship between Sarah and the accused was at all material times one of prostitute/client, and nothing more. Therefore, Sarah's alleged mocking laughter, at the accused's attempt to commit suicide in her presence, could not be considered provocation. Anger and loss of self-control, under such circumstances, was unreasonable, notwithstanding the fact the accused may have paid heavily in cash for her sexual services. The accused should have exercised the same degree of self-control as any other ordinary person, in a prostitute/client environment, and extend to the prostitute the security and assurance that no harm would befall her in the course of rendering her services for the fee paid (see para 35); *Public Prosecutor v Kwan Cin Cheng* [1998] 2 SLR 345 distinguished.

(2) The accused stabbed Sarah in a state of self-triggered irrational anger and disillusionment over her. The injuries inflicted on Sarah by the accused were intentional, and on a balance of probability, the accused was not deprived of any self-control, despite his assertion to that effect. In the circumstances, the defence of grave and sudden provocation could not be availed to the accused. Since some of the injuries inflicted on her were sufficient in the ordinary cause of nature to cause death, the prosecution had proved beyond reasonable doubt that the accused was guilty of the offence of murder within s 300(c) Penal Code (see para 37).

[Bahasa Malaysia summary

Tertuduh telah dituduh membunuh seorang pelacur perempuan ('Sarah'). Tertuduh telah menimbulkan pembelaan provokasi yang serius dan tiba-tiba dan memberi

keterangan bahawa semasa melihat dan mendengar jawapan Sarah yang dingin, mengaibkan dan mengejek terhadap luahan cinta beliau kepadanya, beliau hilang kawalan dan telah menikam Sarah dengan sebilah pisau.

Diputuskan, mendapati tertuduh bersalah dan menjatuhkan hukuman mati ke atasnya:

(1) Hubungan antara Sarah dan tertuduh pada setiap masa material adalah pelacur/pelanggan, dan tidak lebih daripada itu. Oleh itu, ketawa mengejek Sarah yang dikatakan itu sewaktu tertuduh cuba membunuh diri dalam kehadirannya, tidak boleh dianggap sebagai provokasi. Kemarahan dan hilang kawalan diri, di bawah keadaan sedemikian, tidak munasabah, meskipun fakta bahawa tertuduh telah membayar jumlah besar untuk khidmat seksualnya. Tertuduh sepatutnya menggunakan tahap kawalan diri yang sama sepertimana orang biasa yang lain, dalam hubungan pelacur/pelanggan, dan menyatakan kepada pelacur yang perlindungan dan meyakinkan tiada kecederaan akan berlaku ke atasnya semasa memberikan khidmatnya untuk jumlah yang dibayar (lihat perenggan 35); *Public Prosecutor v Kwan Cin Cheng* [1998] 2 SLR 345 dibeza.

(2) Tertuduh telah menikam Sarah dalam keadaan marah yang tidak rasional yang timbul dengan sendirinya dan perasaan kecewa terhadapnya. Kecederaan yang dilakukan ke atas Sarah oleh tertuduh adalah dengan sengaja, dan atas imbangan kebarangkalian, tertuduh tidak terkilan apa-apa kawalan diri, meskipun penegasan beliau adalah sedemikian. Dalam keadaan begini, pembelaan provokasi serius dan tiba-tiba tidak boleh digunakan oleh tertuduh. Memandangkan beberapa kecederaan yang dilakukan ke atasnya adalah memadai dalam sifat keadaan biasa untuk mengakibatkan kematian, pihak pendakwa telah membuktikan melampaui keraguan munasabah bahawa tertuduh adalah bersalah kerana kesalahan membunuh menurut s 300(c) Kanun Keseksaan (lihat perenggan 37).]

Notes

For cases on murder s 302 Penal Code, see 4 *Mallal's Digest* (4th Ed, 2003 Reissue) paras 1424–1477.

Cases referred to

Public Prosecutor v Kwan Cin Cheng [1998] 2 SLR 345 (distd)

Legislation referred to

Penal Code ss 300(c), 302, 304(a)

Wan Shaharuddin Wan Ladin (Attorney-General's Chambers) for the Public Prosecutor. CT Lee (Fernandez & Co) for the accused.

KN Segara J:

[1] The accused was charged for the murder of one Venera Ziatdinova on 13 December 2002, at about 5am, in house No 11A, Jalan USJ 13/5B Selangor,

an offence under s 302 of the Penal Code (see the original charge, exh P2). However, after the evidence of the last prosecution witness, SP14, the investigation officer, and, immediately before the close of the prosecution's case, the learned Deputy Public Prosecutor tendered an amended charge, exh P30. The said amended charge differed from the original charge only to the extent that the victim was identified by name in exh P2, but, now, in the amended charge the victim is not identified by any name at all, although a photostat copy of a passport of the Republic of Uzbekistan bearing the photo of a woman named, Ziatnova Venera (exh P29), was recovered near the decomposed nude body in house No 11A, Jalan USJ 13/5B. Positive identification of the body became a difficult task as it was badly decomposed at the time of discovery by the police, on 17 December 2002, coupled with the fact the victim was a foreigner, with no relatives in this country. Nevertheless, there is no dispute that the body which was recovered on 17 December 2002, at house No 11A, Jalan USJ 13/5B, was the very same body on which the post-mortem was done by Dr Mohammad Shafie bin Othman, SP9, on 18 December 2002. The amended charge, exh P30, reads:

> Bahawa kamu pada 13 Disember 2002, pada jam lebihkurang 5.00 pagi, di No 11A, Jalan USJ 13/5B, di dalam Daerah Petaling, dalam Negeri Selangor Darul Ehsan telah melakukan kesalahan membunuh, iaitu telah menyebabkan kematian seorang manusia yang mana identitinya tidak dikenalpasti dan oleh yang demikian, kamu telah melakukan suatu kesalahan yang boleh dihukum di bawah s 302 Kanun Keseksaan.

[2] The learned Deputy Public Prosecutor called 14 witnesses to establish the prosecution's against the accused. The prosecution also tendered the caution statement of the accused made on 18 December 2002, which was marked exh P16, and the transcript, P16T, as part of the prosecution's case. The murder weapon, a dagger, was also recovered in the house. It was produced and marked, as exh P11.

[3] SP1, Wee Liang Hock, who has been residing at No 11, Jalan USJ 13/5B, Subang Jaya, for two years prior to 17 December 2002, testified that the accused was his neighbour and that the accused was staying alone at house No 11A.

[4] SP6, Chian Swee Yee, the sister of the accused testified that she has a house, No 11A, Jalan USJ 13/5B, Subang Jaya and that on 13 December 2002 only her brother, the accused, and no one else lived in that house. She did not testify that the accused had a girl friend, who was a foreigner. SP6 did not testify that the accused was madly in love with the said girl friend and that the accused had proposed marriage to her and that his proposal had been accepted by her, at some stage of their liaison. SP6 was not asked a single question by counsel, in cross-examination, to ascertain and establish the accused's alleged deep emotional feelings, if any, for his foreign girl friend.

[5] SP2, L/Kpl RA Hirudhayaddass, testified that he was off-duty on 17 December 2002 and when he was in Klang town, at about 6pm, he received a call from one Mr Lee, who informed him that a female Chinese had brought her brother who

allegedly had committed a crime. SP2 identified counsel, acting for the accused, as the said Mr Lee from whom he had received the call on his handphone. Within five minutes of receipt of the call, SP2 proceeded to a car wash centre at Jalan Dato Hamzah in Klang, and upon his arrival there, a male and a female Chinese approached him. SP2 identified himself as police to them, and the female Chinese handed over to him the male Chinese. She said that he had committed a crime and that he was her brother. Thereafter, upon receipt of information from the said male Chinese himself, SP2 arrested him. SP2 identified the accused, as the said male Chinese he arrested. Before the accused was arrested, he told SP2 that he was hurt and how he was hurt. He told SP2 that he had stabbed himself as he wanted to commit suicide. Before SP2 arrested the accused, he examined accused's body and found there was an injury on his left chest, which had been treated. SP2 also observed there were scratch marks on the accused's hand. The accused also informed SP2 that he had a female friend from Uzbekistan, but did not give the name of the said friend. SP2 also testified, that the accused informed him, before he was arrested, that the said friend was in his house in Subang. SP2 took the accused from the car wash to Balai Polis, Klang and handed the accused to ASP Sukri.

[6] SP4, ASP Mohd Sukri bin Kamar, the Senior Investigating Officer, IPD Klang, confirmed that SP2 handed over the accused to him. SP4 testified that the accused handed over to him a bunch of keys (exh P5), and told him it was for his sister's house, where he was staying, that is, No 11A Jalan 13/5B. The accused also informed SP4 that he had a female friend from Uzbekistan. SP4 interrogated the accused and then communicated with the Investigating Officer, IPD Shah Alam, that is, Insp Jamil (SP5). Based on the information given by the accused, and guided by the accused, SP4 proceeded to house No 11A, Jalan USJ 13/5B, Shah Alam. When he arrived at the address together with the accused, Insp Jamil (SP5) was already there.

[7] SP4 testified that the accused had taken the bunch of keys (exh P5) from his trouser pocket, and handed it to him. SP4 handed over the keys to Insp Jamil at the house, upon arriving at the address. The house was a double-storey terrace house. When SP4 arrived, the windows of the house and the front door were locked. SP4 testified that Insp Jamil opened the front door with one of the keys, from the bunch of keys, that he had handed over to Insp Jamil. SP4 did not go into the house.

[8] SP5, Insp Jamil bin Osman, testified that, on 17 December 2002, he was the Investigating Officer at IPD Shah Alam. At about 7.30pm, he received a call from SP4 informing him that a male Chinese had surrendered himself. SP4 requested SP5 to go to an address in the vicinity of USJ. SP5 proceeded to the address and waited the arrival of SP4. SP5 testified, that at about 7.50pm, SP4 arrived together with a male Chinese hand-cuffed, and several other police from IPD Klang. SP5 identified the accused as the said male Chinese. SP5 confirmed that SP4 handed him a bunch of keys (exh P5). Then, SP5 guided by the accused, used one of the keys from the bunch, and unlocked the front door of the house. He saw the body of a nude female in the hall. SP5 contacted ASP Fauzi (SP14) and informed him of the discovery of the body, suspected murdered. ASP Fauzi instructed SP5 to await his arrival, and when ASP Fauzi arrived, SP5 handed the accused over to him.

[9] SP5 also testified that, on 18 December 2002, he was instructed by ASP Fauzi to attend the post-mortem on the body discovered at No 11A, Jalan USJ 13/5B, USJ, Shah Alam. He confirmed that he attended the postmortem at Hospital Klang, and, the said post-mortem was on the same nude decomposed female body he had seen on 17 December 2002, at the said house. (Note: Photographs of the body had been taken on 17 December 2002 by the police photographer (SP3) on the instructions of ASP Fauzi ((see exh P4A-N and in particular P4E and P4F). Photographs of the body were also taken at the post-mortem (see exh P6A-U) by the police photographer (SP8)).

[10] SP10, K/I Ang Hock Ling, on 18 December 2002 at 3.50pm, on the request of ASP Fauzi, recorded a caution statement under s. 113 Criminal Procedure Code from the accused. Counsel for the accused did not object to he said caution statement being tendered in evidence. It was produced and marked, exh P16, and the transcript, P16T.

[11] SP14, ASP Ahmad Fauzi bin Mohamad Zin, Senior Investigating Officer, IPD Shah Alam, received a call from Insp Jamil (SP5) on 17 December 2002, upon the discovery of a dead body in house No 11A, Jalan USJ 13/5B. Together with SP5, he entered the said house and saw a nude body lying on a mattress on the floor in the hall. On a comforter, near the dead body, he found a dagger with its sheath (exhs P11 and P10), a Nokia handphone (exh P19A), a black box (exh P20A), a box of tissue (exh P24A), a pair of spectacles with its case (exhs P25A and P25B), and near the toilet, he found a blouse, a brassier, a panty (exhs. P21A-C) and a pair of jeans (exh P26A). In a plastic bag, near the toilet, SP14 found a photostat copy of a passport, under the name of 'Venera Ziatdinova', from Uzbekistan (exh P29).

[12] Exhibit P29 was found near the nude dead body. However, SP14 was not 100% sure that the dead body was in fact the 'Venera Ziatdinova', named in exh P29, as it was highly decomposed. SP14 testified, under cross-examination, that the Uzbekistan Embassy confirmed that a passport had been issued to one 'Ziatdinova', and that she was an Uzbekistan citizen. In the toilet, SP14 found a bottle 'Toilet Duck' (exh P27A) and a bottle 'JIF' (exh P23A). SP14 did not find any evidence of the house having been broken into, although the things found in the hall appeared to have been scattered as though a struggle had taken place, therein.

[13] Dr Mohammad Shafie bin Othman @ Osman, SP9, performed a post-mortem on 18 December 2002, on the said body found in the house at No 11A, Jalan USJ 13/5B. The body was identified to him by the police. He testified the body was that of a female, decomposed and maggot infested. SP9 estimated the death to have occurred between three to ten days prior to the date of post-mortem. This opinion is consistent with accused's statement in P16 that he had stabbed the deceased on the morning of 13 December 2002. SP9 prepared a post-mortem report (exh P8). The cause of death was stab wounds on the chest.

[14] SP9 testified that there were 11 stab wounds on the body of the deceased, and five of them had penetrated the chest wall. He testified that the stab wounds could have been inflicted with a weapon like exh P11. He testified:

> Berdasarkan pemeriksaan saya, simati telah mati akibat luka-luka tikaman pada bahagian dadanya yang telah mencederakan struktur vital simati iaitu kedua paru-paru dan jantungnya.
>
> Hasil pemeriksaan menunjukkan terdapat 5 luka tikaman yang telah menembusi struktur dadanya yang mana telah mencederakan kedua paru-paru dan jantungnya.
>
> Memangnya kecederaan kepada kedua paru-paru dan jantung boleh menyebabkan kematian kepada sesiapa sahaja.
>
> Luka-luka tikaman tersebut tadi boleh disebabkan oleh tikaman dari suatu objek yang tajam dan runcing.
>
> Luka-luka defensive pada simati boleh berpunca dari objek yang sama dengan luka tikaman yang ada pada si mati.
>
> Luka-luka itu bersesuaian dengan dilakukan menggunakan sebilah pisau.
>
> …
>
> [Satu bilah pisau serta dengan sarung ditandakan ID10 dan ID11]
>
> [ID11 dirujuk kepada saksi]
>
> Pisau ini (ID11) dilihat boleh menyebabkan kecederaan-kecederaan luka tikaman dan luka defensive tersebut.

[15] Primulapathi Jaya Krishnan, SP13, the chemist, testified that the dagger (exh P11) had blood stains which matched the DNA profile of the deceased.

[16] At the close of the prosecution's case the learned defence counsel elected not to make a submission of no case to answer, as he was satisfied, on the evidence adduced by the prosecution, and having had the opportunity to study the written submission of the learned deputy public prosecutor, the prosecution had in fact made out a prima facie case on the amended charge, exh P30.

[17] I entirely agree with the learned deputy public prosecutor and the learned defence counsel that the prosecution had indeed made out a prima facie case. The accused was accordingly, ordered to enter his defence. The accused elected to give evidence on oath.

[18] The accused, aged 36 years, a web designer, testified that in the year 2002 he lived at No 11A, Jalan USJ 13/5B, Subang Jaya. He had lived in the said house for the past 4-5 years prior to 2002. He is not married.

[19] The accused testified that, in August 2002, he met a female Russian, known as Sarah to him, at the Spa Liza De Inn, Petaling Jaya. He knew that her name, in her passport, was Venera Ziatdinova.

[20] The accused testified that, Spa Liza De Inn was an entertainment centre, which provided drinks, sex and massage to its patrons/customers, for a fee. When the accused first met Sarah, at the Spa Liza De Inn, she was working at the said entertainment centre as a prostitute, with the dignified job designation of GRO (Guest Relations Officer), and he used her services. He went to the said entertainment centre 10 to 20 times after getting to know Sarah. He had sex with her on several occasions at the said entertainment centre, and had to pay the entertainment centre RM260 on each occasion, for her services within the said entertainment centre. He said he could book her and take her out of the said entertainment centre, for a higher fee of RM800 to RM1,000, paid to the entertainment centre. He said he availed himself of this service six - seven times, and, took her back to a hotel or his house to have sex.

[21] The accused testified that whenever Sarah was not in his company, he would telephone her every day, and at this stage, began to fall in love with her. The accused further testified that he had made known his feelings to Sarah and presented her a ring. He had proposed marriage to her. He testified that she agreed to marry him and told him to wait. He did not explain why Sarah wanted him to wait and for how long. This event happened in October 2002, within three months after he became one of her clients. Then, in November 2002, Sarah started working in a different entertainment centre as a GRO. This entertainment centre was in Puchong and was called, Kim Lady.

[22] The accused testified that he went daily to Kim Lady, after his work, from the time Sarah started working there in November, 2002. He testified his feelings for her became more intense.

[23] On 12 December 2002, Sarah was still working in Kim Lady. The accused went to see her there, at about 8pm, and returned home alone, at about 12.30am. On that day, he had proposed marriage to her (again), and requested her to stop working in order to marry him. She, neither agreed to stop working in Kim Lady, nor agreed to marry him. In fact, the accused testified that Sarah got angry with him, and he, thereupon, slapped her there (at Kim Lady). The accused alleged Sarah retaliated and slapped him. The accused then returned home, but went back again to Kim Lady, at about 3am (on 13 December 2002). The accused testified he booked Sarah and took her to his house. He arrived at his house, together with Sarah, at about 4am. He felt guilty for having slapped Sarah, and wanted to seek her forgiveness. At his house, he expressed his feelings and love for her, and had sex with her that morning, in the hall of his house. At that time, she was still angry with him and complained that he had assaulted her, and did not truly love her. However, the accused testified, he again professed his love for her and told her that he was willing to sacrifice his life for her, if she did not believe him. He then swallowed 19 'Uphamol' pills in front of her in order to prove to her he meant what he had said. He claimed 'Uphamol' was a type of drug for headaches, more effective than 'Panadol'. He claimed Sarah laughed at him when he swallowed the pills. He then

took out a dagger (exh P11) and cut his hand 4 or 5 times with it, in front of Sarah. Again, the accused claimed Sarah laughed at him and accused him of having cheated her, as it was all a mere act by the accused.

[24] The accused testified that Sarah did not say that she will marry him or that she loved him, although he had swallowed the pills and cut his hand to prove his love for her. She told him that she had come to Malaysia, not because of her love for him, but to earn money. She wanted to earn more money. All along she had been good to him because of the monetary return to her from her sexual services to him. The accused testified he had spent about RM20,000 for Sarah's sexual services to him.

[25] The accused testified that upon seeing and hearing Sarah's cold, humiliating and mocking response to his expression of love for her, he lost control of himself. He then stabbed Sarah with the knife which was in his hand. Sarah attempted to defend herself using her hand and she broke his spectacles. The incident happened very fast and he was not sure what really happened. Sarah fell on to the floor. The incident took place in the hall.

[26] The accused testified that after Sarah fell onto the floor, he became frightened and nervous. He did not know what to do at that time. He thought of committing suicide and stabbed himself. He then went into the bathroom and drank liquid toilet cleaners from a bottle of 'Toilet Duck', 'Harpic' and 'Jiff' after which he vomited and felt weak. Since his body felt weak, he went and slept beside Sarah in the hall. He woke up at about 10am on 13 December 2003.

[27] Upon waking up, he felt frightened and anxious. He did not know how to confront the situation. Nevertheless, he went to stay at Waterfront Hotel, in Klang, for two days, and still tried to commit suicide by taking rat poison.

[28] After staying at Waterfront Hotel, he moved into Hotel Prescot, in Klang. There, again, he attempted to commit suicide by drinking 'Dettol' and 'Clorox'. The accused's attempts to commit suicide proved futile. Then, on 16 December 2002, the accused went to see his sister at Taman Eng Ann, Klang. However, at that time he was still not brave to tell his sister what had happened.

[29] At about 11pm, on 16 December 2002, he left his sister's house alone and proceeded back to his house to determine whether all the events that had taken place were a dream or a reality. The accused reached his house at about 12 midnight, and when he entered the house he saw Sarah lying dead, on the floor, in the hall. He, thereupon, went back to his sister's house in Klang and told his sister that he had killed a person. He then surrendered himself to a policeman in Klang and the said policeman took him to Balai Polis Klang.

[30] The accused testified that he did not plan to murder Sarah when he brought her to his house on 13 December 2002. He testified he surrendered himself to the

police because he had committed an offence and wanted to be responsible for the commission of the offence.

[31] Under cross-examination, the accused testified:

> Setuju saya tidak bertengkar dengan Sarah dari jam 3.00 pagi hingga 4.00 pagi pada 13/12/2002.
>
> …
>
> Setuju saya cuba membunuh diri saya selepas menikam Sarah.
>
> Saya setuju saya cuba membunuh diri saya selepas menikam Sarah kerana tahu perbuatan saya itu adalah salah.
>
> Saya setuju Sarah berbadan kecil daripada saya.
>
> Saya setuju sebelum saya menikam Sarah, beliau tidak mempunyai apa-apa senjata.
>
> …
>
> Saya setuju Sarah tiada saudara-mara di Malaysia.
>
> Setuju Sarah datang ke Malaysia untuk mencari wang.
>
> Setuju bila saya tidak melanggani Sarah, beliau berhak untuk melanggani lelaki-lelaki lain.
>
> Pada 13 Disember 2002 jam 3.00 pagi saya ada membayar RM800 kepada Kim Lady supaya membawa Sarah keluar.
>
> Tiap kali saya membawa Sarah keluar saya membuat pembayaran terus kepada Pusat Hiburan berkenaan dan bukan kepada Sarah sendiri.

[32] It is very clear from the testimony of the accused, an attempt has been made to raise the defence of grave and sudden provocation, in order to avoid a conviction for murder under s 302 Penal Code and substitute, therefore, a conviction for culpable homicide not amounting to murder under s 304(a) Penal Code. The accused must be commended for being honest and honorable in wanting to be responsible for a crime he had committed, and surrendering himself to the police, although almost four days after the event and after his attempts to commit suicide, as self-punishment, had failed. Defence counsel has tried his very best to save the accused from the death penalty by tenaciously arguing the accused was so deeply in love with the deceased, that he lost his power of self-control when the deceased rejected his hand in marriage, and mockingly laughed at his show of proof of his love for her, on the fateful day he stabbed her with the dagger in his hand.

[33] The accused may very well have lost his power of self-control on the day he stabbed the deceased because his love was unrequited. However, on the undisputed facts, I am unable to make a finding that the accused had lost his self-control due to any grave and sudden provocation (either by words, conduct or action) from the deceased.

[34] The accused knew that Sarah was a prostitute. He knew that Sarah was a foreigner and had come to Malaysia to earn as much as she could as a hooker.

The accused knew that Sarah had no intention to marry him or anyone else, and give up her livelihood selling her body. He knew she moved from one entertainment centre to another for that very purpose. He knew that she did not love him. He paid for her services. Sarah's relationship with the accused was at all times one of prostitute and client. It ought to have been obvious and plain to see that Sarah had dutifully carried out her obligations to the accused, under his bargain with the entertainment centre, upon her services being booked by him. The accused's relationship with Sarah was not a relationship in which he was having sex (for free) in a mutually and emotionally binding tie, with a view to matrimony. His sister (SP6) never testified of the existence of any emotional attachment between Sarah and the accused. Nay, she does not appear to have been aware of any attraction between the accused and Sarah at any time. It is hard to believe that the accused could fall in love with an immoral woman, and propose marriage to her without knowing of her true character, family and cultural background, and risk the likelihood of having to face inherent problems to a successful and blissful marriage, from the very outset. Nevertheless, even if it is true that the accused really and truly loved her, the fact it was never reciprocated by Sarah must always be in the forefront, together with the fact she never consented to anything but a prostitute/client relationship, in assessing whether her alleged conduct, reactions and utterances in response to accused's manner of proof of his love for her, and his single-mindedness to marry her, could amount to grave and sudden provocation which deprived the accused of the power of self-control.

[35] It is my finding that the relationship between Sarah and the accused was at all material times one of prostitute/client, and nothing more. Therefore, Sarah's alleged mocking laughter, at accused's attempt to commit suicide in her presence, cannot be considered provocation. Therefore, the issue of 'grave and sudden' does not arise. There is no reason for the accused to loose his self-control in an environment of prostitute/client relationship when a prostitute refuses his hand in marriage and laughs mockingly at him. There is no reason to be emotional over the rejection in such a relationship. Anger and loss of self-control, under such circumstances, is unreasonable, notwithstanding the fact the accused may have paid heavily in cash for her sexual services. The accused should have exercised the same degree of self-control as any other ordinary person, in a prostitute/client environment, and extend to the prostitute the security and assurance that no harm would befall her in the course of rendering her services for the fee paid.

[36] The facts, in the Singapore case of *Public Prosecutor v Kwan Cin Cheng* [1998] 2 SLR 345, relied on as authority, to support the defence of grave and sudden provocation by learned defence counsel, are clearly distinguishable from the facts of the present case before me. In that case, the respondent and the deceased were lovers for a number of years. In our case, the deceased and the accused were not lovers but prostitute/client for about four months prior to the tragedy. Further, in *Public Prosecutor v Kwan Cin Cheng*, the prosecution accepted, that the respondent had lost his self-control upon being provoked by the deceased, but contended that such provocation was not grave and sudden, as a reasonable man in the respondent's position would not have reacted as the respondent did. Briefly, the facts in *Public Prosecutor v Kwan Cin Cheng* are:

The respondent was charged with murder for having stabbed a woman (the deceased) to death. The respondent and the deceased had been lovers for a number of years. In August 1996 the deceased began dating another man but did not tell the respondent. On 9 September she ended her relationship with the respondent, saying that her father had objected to the relationship. On 4 October, the respondent arranged to meet her on the pretext of repaying her some money he owed her, intending to beg her to resume their relationship. He bought a knife shortly before the meeting as he planned to kill himself if she rejected him. At the meeting, when told of his thoughts of suicide, the deceased replied in a callous tone that he was 'useless' and doubted if he dared to kill himself; she also said she was happy with a new boyfriend, and his death would have nothing to do with her. Upon hearing this, the respondent stabbed her to death with his knife. The trial judge held that the respondent had established a defence of grave and sudden provocation; he convicted on a reduced charge of culpable homicide not amounting to murder and sentenced him to ten years' imprisonment. On appeal, the conviction was upheld and sentence enhanced to life imprisonment.

[37] I am satisfied the accused stabbed Sarah in a state of self-triggered irrational anger and disillusionment over her. By no stretch of imagination can Sarah's conduct, in making known to him her stand about her relationship, be it with a mocking laughter or otherwise, be construed provocation. The injuries inflicted on Sarah by the accused were intentional, and on a balance of probability, I am satisfied the accused was not deprived of any self-control, despite his assertion to that effect. In the circumstances, the defence of grave and sudden provocation cannot be availed to the accused. Since some of the injuries inflicted on her are sufficient in the ordinary cause of nature to cause death, the prosecution has proved beyond reasonable doubt that the accused is guilty of the offence of murder within s 300(c) Penal Code which reads:

300. Except in the cases hereinafter excepted, culpable homicide is murder:

…

…

if it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death;

[38] SP9 had testified:

Berdasarkan pemeriksaan saya, simati telah mati akibat luka-luka tikaman pada bahagian dadanya yang telah mencederakan struktur vital simati iaitu kedua paru-paru dan jantungnya.

Hasil pemeriksaan menunjukkan terdapat lima luka tikaman yang telah menembusi struktur dadanya yang mana telah mencederakan kedua paru-paru dan jantungnya.

Memangnya kecederaan kepada kedua paru-paru dan jantung boleh menyebabkan kematian kepada sesiapa sahaja.

[39] In the above circumstances, the accused was found guilty as per the amended charge in P30, and convicted for the offence of murder, under s 302 Penal Code. He was sentenced to death.

Accused found guilty and sentenced to death.

Reported by Loo Lai Mee